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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 2

HARTFORD-EMPIRE COMPANY, F. GOODWIN SMITH, BARTLETT ARKELL, *et al.*,

Appellants,

v.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF ON BEHALF OF CERTAIN GLASS MANUFACTURING COMPANIES, APPEARING BY COUNSEL AS AMICUS CURIAE IN ANSWER TO BRIEF HEREIN OF WALTER A. BUCK, ESQ., AS AMICUS CURIAE.

ARNOLD BOYD,
60 Broadway,
New York 4, N. Y.
as Amicus Curiae, Representing
the Knox Companies.

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Summary Statement of Position

Several weeks prior to the argument by counsel of this case on appeal, Walter A. Buck, Esq., filed a brief herein as amicus curiae representing certain medium sized glass container manufacturing companies. A brief in answer thereto was filed by Arnold Boyd, Esq., representing other glass container manufacturing companies who did not agree with the contentions made by Mr. Buck. These were the so-called Knox Glass Companies, namely:

Knox Glass Bottle Company, of Pennsylvania
Knox Glass Bottle Company, of Mississippi
Lincoln Glass Bottle Company
Marienville Glass Company
Metro Glass Bottle Company
Oil City Glass Bottle Company
Pennsylvania Bottle Company
Seaboard Glass Bottle Company
Wightman Bottle & Glass Manufacturing Company.

Recently Mr. Buck again, as amicus curiae, representing the same companies as before, has filed a second brief, which, despite some modifications, is of the same general content and tenor as the first. The glass container manufacturing companies named above are no more convinced than heretofore of the soundness of the position taken by Mr. Buck. Accordingly, this answering brief is filed on their behalf by Arnold Boyd, Esq., as amicus curiae.

Argument

It is Mr. Buck's contention, as it is Hartford's, that the medium sized glass container manufacturers will not be able to remain in competition in their industry, unless they continue to have available to them Hartford's machinery, the research and engineering services of Hartford, and the technical services rendered by it in the installation and maintenance of glass manufacturing machinery. Mr. Buck argues that Hartford, in its turn, cannot continue to exist and supply machinery and the facilities and services described to the medium sized glass container manufacturing companies if its revenue producing activities are kept within the limits set by the judgment of the District Court, which denies to Hartford the right to collect royalties on account of machinery and equipment covered by its existing patents and patent applications because of their past wrongful uses thereof. Mr. Buck urges the vacating of that portion of the judgment of the lower court which imposes

the prohibition described. He seeks to have the judgment so modified that Hartford can continue to collect royalties with respect to existing patents and patent applications, as it did in the period before the judgment was rendered, except as to patents acquired by Hartford which Mr. Buck states Hartford has agreed to dedicate to the public domain. As it is later pointed out, the dedication of these patents would leave the Hartford licensing system substantially intact.

Mr. Buck does not speak for *all* the medium sized glass companies. In particular, he does not speak for the Knox Companies, which have not found Hartford to be essential to their operations, as Mr. Buck contends Hartford has been to the medium sized companies generally. Several companies in the Knox Group have developed without the use of Hartford's research or engineering facilities or machine servicing. Since they were forced, against their will, to come into the Hartford licensing system they have made virtually no use of Hartford's facilities and services, despite the fact that they were compelled to pay for them. Mr. Buck, in effect, proposes that these companies, and others like them, should pay a subsidy to Hartford to keep it in existence.

There is nothing in law or equity, or in fair business practice, it is submitted, which condones the payment of tribute by a business concern for the alleged benefit of another. It does not follow, moreover, that the omission of the tribute in the present instance will have the fatal consequences to Hartford Mr. Buck contends. Under the judgment of the District Court Hartford is permitted (a) to manufacture and sell, or license, under reasonable terms and conditions, any machinery and equipment not covered by existing Letters Patent or applications for Letters Patent, and (b) to furnish and supply any research, engineering facilities and services to those of the glass industry who may desire it. If the research, engineering facilities and

services which Hartford has to offer have the merits attributed to them by Mr. Buck, Hartford, with its established position in the field, should be able to make its own way in the market under the provisions of the judgment of the lower court without benefit of subsidy.

Mr. Buck's argument gains no weight from the offer of Hartford referred to by him, to dispose of, for a proper consideration, such patents and exclusive patent rights as are held by this court to have been unlawfully acquired from others, retaining only patents of its own invention, patents properly acquired from others, and strictly non-exclusive rights under all other patents. From the record in this case it would seem to be impossible to disentangle effectively the patents which Hartford has acquired from those patents which it claims cover its own alleged inventions. It will be noted that Hartford itself has contended from the beginning that its own inventions were basic and that it purchased the patents which it acquired from others principally because of their nuisance value to its own patents and inventions. The adoption of this suggestion would leave uncorrected the condition complained of by the Government and would permit Hartford to retain the substance of its former position under the licensing system.

Conclusion

For the reasons submitted, we are of the opinion that the remedies provided in the judgment of the District Court will be beneficial to the glass industry and should not be modified.

Respectfully submitted,

Arnold Boyd,
60 Broadway,
New York 4, N. Y.
as Amicus Curiae, Representing
the Knox Companies.